

**REMARKS**

This Response is in reply to the Final Office Action rejection mailed on May 16, 2007. Claims 1 – 48 are pending in the application. Claims 1 – 5, 7 – 10, 13, 14, and 19 – 21 are rejected. Claim 6 is objected to. Claims 11, 12, 15 – 18, and 27 – 48 are withdrawn. Claims 22, 23, 25, and 26 are allowed.

Claims 1 – 5, 7 – 10, 13, 14, and 19 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 7,033,362 (hereinafter McGahan). McGahan discloses devices to gain access to a disc space between adjacent vertebral members. As illustrated in Figures 3 – 5d, a distractor 8 is placed between the vertebral members to spread the vertebral members apart. A distraction window 30 is then slid over the distractor 8. The distraction window 30 includes a distal end with flanges 36, 40 that are positioned on either side of the distractor 8 between the vertebral members. The flanges 36, 40 maintain the vertebral spacing. Once the distraction window 30 is in place, the distractor 8 is removed. An elongated guide tube 32 may be attached to a proximal end of the distraction window 30. The guide tube 32 is generally hollow for guiding instruments and implants towards the vertebral members.

Claim 1 includes a docking ring forming a window, and a mount sized to attach to the docking ring and extend across the window. The mount includes a receiving section, and a plurality of instruments may mate with the receiving section. Claim 1 also includes that the mount extends below a distal side of the docking ring. The Office Action equates the distractor 8 to the mount; however, the distractor 8 does not meet the limitations for the mount specified in claim 1. First, claim 1 requires that the mount attach **to** the docking ring. Assuming that the distraction window 30 is the docking ring, the distractor 8 does not attach to the distraction window 30. McGahan states that the guide tube 32 and the distraction window 30 pass **over** the distractor 8. (Col. 7, lines 21 – 23). Because the guide tube 32 and distraction window 30 pass over the distractor 8, and does not attach to the distractor 8, the distractor 8 can be

removed from the disc space leaving the guide tube 32 and distraction window 30 positioned as shown in Fig. 4. (Col. 8, line 65 through Col. 9, line 1). Thus, the distractor 8 does not attach to the distraction window 30 and this limitation of claim 1 is not met.

Second, claim 1 specifies that the mount includes a receiving section that mates with a plurality of instruments. Assuming again that the distractor 8 is the mount, McGahan does not teach or suggest that any instruments mate with the distractor 8. McGahan instead discloses that a plurality of instruments mate with the distraction window 30 (see, for example, Figures 10, 11a – 11e, and 16), not the distractor 8. Therefore, McGahan does not disclose a plurality of instruments that mate with the mount.

If instead the guide tube 32 is considered to be the mount, the limitations of claim 1 still are not met. Claim 1 includes that the mount extend below the distal side of the docking ring. The guide tube 32 attaches to a proximal side of the distraction window 30. As illustrated in Figure 3, the guide tube 32 does not extend below the distal side of the distraction window 30. Additionally, as discussed above, the plurality of instruments mate with the distraction window 30, not the guide tube 32.

For at least these reasons, independent claim 1 and dependent claims 2 – 7 are not anticipated by McGahan and are in condition for allowance.

Claim 8 includes a foundation instrument including a body that forms a window sized to extend over a portion of a first and second vertebral member and a disc space therebetween, and a spacer extending across the window and below a distal side of the body. Claim 8 also includes a plurality of instruments sized to mount on the spacer. Reference is now made to Figure 3 of McGahan. Assuming that either the guide tube 32 or the distraction window 30 could qualify as the body that forms a window as required by claim 8, the distractor 8 is the only component in McGahan that could qualify as a spacer that extends across the window and extends below a distal side of the body. As discussed above for claim 1, McGahan does not

disclose that a plurality of instruments mate with the distractor 8. In fact, McGahan discloses that a plurality of instruments mate with the distraction window 30 (see, for example, Figures 10, 11a – 11e, and 16), not the distractor 8. Therefore, McGahan does not disclose a plurality of instruments that mate with the spacer.

For at least these reasons, independent claim 8 and dependent claims 9, 10, 13, 14, and 19 are not anticipated by McGahan and are in condition for allowance.

Claim 20 was rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,489,307 (hereinafter Kuslich). Kuslich discloses a drill tube as illustrated in Figure 31. The distal end of the tube includes teeth for engagement with the vertebral members. A vertebral reamer as illustrated in Figure 34 is sized to fit within the tube. The reamer includes a distal end with cutting blades 131. The reamer is axially moved along the tube and rotated with the blades contouring the vertebral members.

Claim 20 has been amended to now include that the spacer is non-movably attached to the body. Kuslich discloses that the operation of the reamer includes rotating the reamer after attaching a handle specifically configured to aid in the rotation (see Col. 8, lines 20 – 30). Kuslich does not teach or suggest that the reamer may be operated non-movably (without rotation). In fact, the reamer is “provided for completing a bore” (Col. 8, line 9). Because a “bore” is defined as piercing a solid substance with a rotary cutting instrument and “reamer” is defined as a rotary tool (Webster’s College Dictionary), it is clear that the reamer of Kuslich is operable only when rotated.

For at least these reasons, independent claim 20 and dependent claim 21 are not anticipated by Kuslich and are in condition for allowance.

In view of the above amendments and remarks, the Applicants submit that the present application is in condition for allowance and such action is respectfully requested. If any issues remain unresolved, the Applicant's attorney requests a telephone interview to expedite allowance and issuance.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read 'D. Kalish', written over a horizontal line.

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